

 KENTUCKY CORRECTIONS Policies and Procedures	Policy Number	Total Pages
	27-16-01	9
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	Amended 12/9/08	February 6, 2009
Authority/References KRS 16.220, 196.030, 196.070 196.075, 218A.500, 237.090, 431.005, 439.348, 439.430, 439.470, 439.480, 500.080, 500.090, 533.050, 533.060 P&P ACA 3-3177	Subject SEARCH, SEIZURE, AND PROCESSING OF EVIDENCE	

I. DEFINITIONS

“Chain of evidence” means documented accountability for the custody of evidence from the moment it reaches the officer’s custody until the moment it is offered as evidence, or the knowledge or record of each person who has come into possession of a physical object from the time it is discovered until it is presented in a hearing.

“Contraband” means an article or thing that an offender under the jurisdiction of Probation or Parole is prohibited from obtaining, possessing, or exercising control over, either by statute, departmental regulation, or special condition set by the releasing authority or special instruction of the officer.

“Drug paraphernalia” is defined in KRS 218A.500(1).

“Dangerous instrument” is defined in KRS 500.080(3).

“Deadly weapon” is defined in KRS 500.080(4).

“Immediately Unusable Firearm” means a firearm that cannot be used as designed to fire a projectile without mechanical manipulation. This may include but is not limited to: secured with breech open by lock or other fixture, disassembled, or partially disassembled so as to be useless.

“Reasonable suspicion” means a less stringent standard than probable cause that requires no more than that the authority acting be able to point to specific and articulable facts that taken together with rationale inferences from those facts, reasonably warrant a belief that a condition of probation or parole has been or is being violated.

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“Search warrant” means an order signed by a judge or his designee, directing a law enforcement officer to conduct a search of a designated object or place for the purpose of seizing designated property or kinds of property.

“Unreasonable search” means a search which in light of the circumstances is not conducted at a reasonable time and in a reasonable manner. For example: searches made too frequently, searches for the purpose of harassing an offender, a search made for a prolonged period of time, or a search made for an arbitrary or oppressive reason.

II. POLICY and PROCEDURE

- A. An offender shall be subject to a personal search, search of his residence, or any other property under his control. The basis for any search shall be substantiated by reasonable suspicion that the performance of the search may produce evidence to support the alleged violation.
 1. Reasonable suspicion may be anything that causes an officer to reasonably believe a condition of supervision has been violated.
 2. Reasonable suspicion shall not be established based on the offender’s reputation, a casual rumor, or a hunch.
 3. Reasonable suspicion may be established through information from law enforcement personnel, relatives, neighbors, or other sufficiently trustworthy sources, including anonymous tips.
 4. To justify actions based upon reasonable suspicion, officers shall point to specific, articulable facts and reasonable inferences and explain how they drew their conclusions from those facts in light of their experience.
 5. Unspecified suspicions or mere hunches shall not provide reasonable grounds for actions which are permitted only on the basis of reasonable suspicion.
- B. Any evidence confiscated from an offender shall be properly secured and the chain of evidence shall be fully documented.
- C. If an officer conducts a warrantless search, a consent search, or a search pursuant to a warrant, he shall file a special supervision reporting document.
- D. Search Without Consent
 1. If an officer has reasonable suspicion to believe that an offender is in possession of contraband or in violation of the conditions of his supervision, the officer may conduct an investigation and search to validate the suspicion or information received. Each case shall be discussed with the District Supervisor or designee, if possible, before any action is taken by the officer and the purpose of the search articulated.

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2. Warrantless Search

- a. If reasonable suspicion exists to believe that an offender is violating a condition of supervision or the officer has possession of evidence of a violation of the terms and conditions of his supervision, an officer may search without a warrant.
- b. If exigent or emergency circumstances exist, an officer may search without a warrant. Exigent circumstances shall include the following:
 - (1) If delay may endanger the life of the officer or the lives of others;
 - (2) If there is a likelihood that the offender will escape if not swiftly apprehended;
 - (3) To prevent the offender from destroying or distributing evidence; and
 - (4) If delay may enhance the ability of the offender to make an effective, forcible resistance.

E. Consent Search

1. If an offender under the jurisdiction of Corrections gives his consent to the officer to search his property or person, it shall be considered a lawful and reasonable search if the consent is intelligently, freely, and voluntarily given and is clear and explicit. In these cases the officer, for his protection and documentation, shall have the offender sign a statement giving his consent to the search. If the offender refuses to sign the consent and circumstances support a warrantless search, the officer may proceed, but shall note this on a consent document and have that document witnessed by any third party present at the time.
2. Consent may be given to search a residence by a third party, including a spouse, a co-tenant, or a parent.
 - a. The spouse of the offender is in the position to consent to a search and seizure of property in their home if each spouse normally exercises equal control of the property or residence.

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- b. Co-tenants may consent to a search for each other. The scope of the search shall be limited to the area over which the consenting occupant has joint use or control.
- c. A parent may consent to a search of his child's room or effects in the premises controlled by the parent and over which the parent may exercise dominion or control.

F. Warrants

- 1. If time permits, the officer may obtain a warrant prior to searching an offender's residence or vehicle. In the absence of exigent circumstance or consent, if the search is based on probable cause to believe that a new crime has been committed and not because of reasonable suspicion that a condition of supervision has been violated, a warrant shall be obtained.
- 2. The officer shall follow the guidelines for obtaining a search warrant as set out in his judicial district.
- 3. The search warrant shall be executed immediately after the issuance of the warrant. The officer shall obtain assistance from other Probation and Parole officers or local law enforcement officials. The officer shall not execute a search warrant alone.
- 4. If a search warrant is obtained, upon arrival at the designated location, the officer shall knock on the door, identify himself, state his purpose, and await refusal or silence before forcing entry into the premises. The search warrant shall be read to the offender or other occupant of the residence. If nobody is at the residence at the time of the search, the warrant shall be read aloud prior to the search being conducted.

G. Search of Property Other than Residence

Searches of motor vehicles, aircraft, and watercraft, which are owned by or in the control of an offender under supervision, may be conducted by an officer without a warrant if there is reasonable suspicion that the vehicle contains evidence of a violation of the conditions of supervision.

H. Pat Down Frisk

The officer may frisk an offender if there is reasonable suspicion to believe that the offender is concealing contraband on or about his person or for security purposes.

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I. Conducting the Search

1. The officer shall be accompanied by another Probation and Parole officer or a local law enforcement official for the purpose of conducting the search of an offender's residence, auto, or other property.
2. The search shall be conducted in a reasonable manner.
3. Only those areas occupied solely by the offender and those areas of common habitation may be searched.
4. If the offender is not the sole occupant of the residence or owner of the vehicle or other property, an effort shall be made to determine ownership before any property is removed.

J. Plain View Doctrine

Any object falling in plain view of an officer, who has the authority to be in a position to have that view by virtue of his job description, departmental policy, and to ensure public safety, shall be subject to seizure. The plain view doctrine shall be applied to anything that an officer becomes aware of by use of his five senses while in a lawful position.

K. Evidence

1. Probation and Parole Officer's Immediate Responsibility
 - a. Any evidence of a new crime shall be collected and processed by local law enforcement or the Kentucky State Police.
 - b. If the items confiscated shall only be used as proof of a violation of the Conditions of Supervision and not as fruits of a new crime, the items may be secured in the local Probation and Parole office under lock and key and with the proper documentation attached. If the evidence is confiscated at a time other than normal working hours, when the evidence officer is unavailable, the officer may maintain the evidence in his custody until the evidence may be secured.
 - c. All monies confiscated under subparagraph b. shall be transported to the Department of Corrections Central Office for safe keeping no later than the first business day following confiscation.

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- d. Any firearm confiscated under subparagraph b. shall be stored in a state that renders it immediately unusable while in the custody of Probation and Parole.

2. Marking Evidence for Identification

- a. If possible, a confiscated item shall be placed in an envelope or plastic bag prior to transporting to the designated property custodian. If property is confiscated, a chain of custody document shall be used.

- b. The following information shall be listed on the document for identification purposes:

- (1) Firearm

List caliber, brand, type, barrel length, finish, model number, and serial number.

- (2) Weapon (Other than Firearm)

List the type, brand name, size, color, and serial number, if applicable.

- (3) Drugs and Medications

List the type and amount and specify if pill or liquid form.

- (4) Alcoholic Beverages

List the number of containers, container type, size, brand, and alcohol content. Indicate whether the seal is broken on the container.

- (5) Other Types of Property and Evidence

List type of item, brand name, color, size, model, and serial number, if applicable, and brief description of the evidence.

- (6) Money

The total amount shall be noted. The denominations, serial numbers, particular number of bills or coins, and any

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distinguishing characteristics like tears, discoloration, or marks shall be indicated.

3. Removal or Examination of the Evidence from the Secured Location

- a. All evidence stored at a Probation and Parole office or other facility shall be maintained by the District Supervisor on an evidence log so as to have a contemporaneous inventory of all evidence held. All activities involving any piece of evidence shall also be recorded on that log.
- b. Kentucky State Police Lab Examination
 - (1) If the evidence requires examination by the Kentucky State Police Lab, a designated officer shall:
 - (a) Personally transport the evidence to the crime lab;
 - (b) If feasible, upon approval of the District Supervisor or designee, coordinate the transportation of evidence with another law enforcement agency; or
 - (c) Send the evidence through the U.S. Mail by certified mail.
 - (2) A receipt of verification shall be maintained with the evidence log sheet.
 - (3) The original examination result document shall, following receipt from the Kentucky State Police Lab, be filed with the evidence in the secured location. One (1) copy shall be maintained in the evidence log and one (1) copy shall be maintained in the case folder.
- c. Examination or Removal of Evidence:
 - (1) If the evidence is viewed, examined, or taken from the secured area, for a specific legitimate purpose, there shall be two (2) persons present when the locker is opened.
 - (2) If the item is removed from the secured area for court or hearing, the appropriate portion of the chain of custody document shall be filled out. The officer removing the evidence shall take responsibility for the item.

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(3) If the evidence is removed for the purpose of administration, court, or examination, the evidence shall be promptly returned to the secured area and the date and time of return shall be noted on the evidence envelope.

d. If evidence is released to the custody or control of another authorized person, he shall sign the evidence out on the chain of custody section, including date and time obtained, for accountability.

4. Disposal of Evidence

a. Time Tables

(1) If the evidence, except a firearm, is seized by an officer from an offender and the evidence is not used for a revocation procedure, the evidence shall be disposed of within thirty (30) days of confiscation.

(2) Evidence that is used in revocation proceedings may be disposed of one (1) year from the date of final disposition of the case involving the evidence.

b. Method of Disposal

(1) Evidence may be disposed of in accordance with a court order.

(a) Property forfeited to the Division for use shall be added to the Division inventory and placed at the discretion of the Director or her designee.

(b) Monies forfeited to the Division shall be deposited and spent at the discretion of the Director or her designee for purposes of Division administration.

(2) If the court order is not specific regarding the method of disposal, the officer shall consult the District Supervisor or designee before any action is taken. Methods of disposal may include:

(a) Turning the evidence over to the State Police for disposal;

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- (b) Pouring alcoholic beverages down a drain in the presence of two (2) witnesses;
 - (c) Burning at a designated location. The District Supervisor or designee and one (1) witness shall be present if evidence is disposed of in this manner; or
 - (d) If the officer uses a firearm as evidence in a revocation hearing, the firearm shall be transferred to the Kentucky State Police pursuant to the requirements of KRS 16.220, 237.090, and 500.090.
 - (3) Methods of disposal, other than those listed above, shall have the prior approval of the Director of the Division of Probation and Parole or her designee.
 - (4) If evidence is ordered sold by the court, it shall be done in accordance with Corrections Policies and Procedures regarding Disposal of Surplus Property (CPP 2.10).
 - (5) The District Supervisor or designee shall inventory evidence in a secure area on a semi-annual basis to ensure disposal according to timetables outlined.
5. Proof of Ownership by a Third Party
- a. Evidence that is not an illegal substance, and is seized by an officer during a search, shall be returned to its lawful owner if proper proof of ownership is established.
 - b. If a gun is confiscated during a search of an offender's residence, and others reside there, a co-tenant may prove ownership and take possession of the gun.
 - c. Prior to releasing any evidence to a third party, the releasing authority or District Supervisor or designee shall be advised. A document shall be signed by the third party and witnessed by two (2) people acknowledging receipt of the item confiscated. The signed document shall be maintained in the case folder.